

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 20, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TYANNA AVERETT,

Plaintiff,

v.

KADLEC REGIONAL MEDICAL
CENTER,

Defendant.

No. 4:23-cv-05082-JAG

**STIPULATED PROTECTIVE
ORDER**

Pending before the Court is the parties' Stipulated Motion for Protective Order. ECF No. 16. The Court has reviewed the Motion and the file and is fully informed. Accordingly, the parties' Stipulated Motion for Protective Order, **ECF No. 16**, is **GRANTED**. The protective order below is entered as stipulated by the parties:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

1 disclosure and use extends only to the limited information or items that are
2 entitled to confidential treatment under the applicable legal principles, and it does
3 not presumptively entitle parties to file confidential information under seal.

4 2. “CONFIDENTIAL” MATERIAL

5 “Confidential” material shall include the following documents and tangible
6 things produced or otherwise exchanged:

- 7 (a) Patient and employee medical and/or counseling records;
- 8 (b) Any party’s financial information or tax records;
- 9 (c) Non-party personnel files, including but not limited to home
10 addresses, dates of birth, social security numbers, emergency
11 contacts and their identifying information, medical information, sick
12 leave and related medical information, and performance records;
- 13 (d) Documents that describe, contain or disclose internal and non-public
14 information pertaining to Kadlec Regional Medical Center, such as
15 patient information, intellectual property, financial information, and
16 trade secrets.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential
19 material (as defined above), but also (1) any information copied or extracted from
20 confidential material; (2) all copies, excerpts, summaries, or compilations of
21 confidential material; and (3) any testimony, conversations, or presentations by
22 parties or their counsel that might reveal confidential material.

23 However, the protections conferred by this agreement do not cover
information that is in the public domain or becomes part of the public domain
through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material
3 that is disclosed or produced by another party or by a non-party in connection
4 with this case only for prosecuting, defending, or attempting to settle this
5 litigation. Confidential material may be disclosed only to the categories of
6 persons and under the conditions described in this agreement. Confidential
7 material must be stored and maintained by a receiving party at a location and in a
8 secure manner that ensures that access is limited to the persons authorized under
9 this agreement.

10 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
11 otherwise ordered by the court or permitted in writing by the designating party, a
12 receiving party may disclose any confidential material only to:

- 13 (a) the receiving party’s counsel of record in this action, as well
14 as employees of counsel to whom it is reasonably necessary to
15 disclose the information for this litigation;
16 (b) the officers, directors, and employees (including in house
17 counsel) of the receiving party to whom disclosure is
18 reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for
20 Attorney’s Eyes Only and is so designated;
21 (c) experts and consultants to whom disclosure is reasonably
22 necessary for this litigation and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
24 (d) the court, court personnel, and court reporters and their staff;
25 (e) copy or imaging services retained by counsel to assist in the
26 duplication of confidential material, provided that counsel for

1 the party retaining the copy or imaging service instructs the
2 service not to disclose any confidential material to third parties
3 and to immediately return all originals and copies of any
4 confidential material;

5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who acknowledged
7 they will treat Confidential material as confidential consistent
8 with this Protective Order, and subsequently sign the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A),
10 unless otherwise agreed by the designating party or ordered by
11 the court. Pages of transcribed deposition testimony or
12 exhibits to depositions that reveal confidential material must
13 be separately bound by the court reporter and may not be
14 disclosed to anyone except as permitted under this agreement;

15 (g) the author or recipient of a document containing the
16 information or a custodian or other person who otherwise
17 possessed the information.

18 4.3 Filing Confidential Material. Before filing confidential material or
19 discussing or referencing such material in court filings, the filing party shall
20 confer with the designating party to determine whether the designating party will
21 remove the confidential designation, whether the document can be redacted, or
22 whether a motion to seal or stipulation and proposed order is warranted.

23 Notwithstanding the above, if a party does not have time to confer with the
designating party prior to the deadline for a filing, the filing party shall take
reasonably timely steps to give notice to the designating party of the submitting
party’s intention to file or use the Confidential Material, including specific

1 identification (by reference to Bates number or other identifier) of the Confidential
2 Material. The submitting party will file all Confidential Material under seal, and
3 the Designating Person may then file a motion to seal, pursuant to this Court's
4 rules.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for
7 Protection. Each party or non-party that designates information or items for
8 protection under this agreement must take care to limit any such designation to
9 specific material that qualifies under the appropriate standards. The designating
10 party must designate for protection only those parts of material, documents,
11 items, or oral or written communications that qualify, so that other portions of the
12 material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified or that have been made for
16 an improper purpose (*e.g.*, to unnecessarily encumber or delay the case
17 development process or to impose unnecessary expenses and burdens on other
18 parties) expose the designating party to sanctions.

19 If it comes to a designating party's attention that information or items that
20 it designated for protection do not qualify for protection, the designating party
21 must promptly notify all other parties that it is withdrawing the mistaken
22 designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided
in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
otherwise stipulated or ordered, disclosure or discovery material that qualifies for

1 protection under this agreement must be clearly so designated before or when the
2 material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic
4 documents and deposition exhibits, but excluding transcripts
5 of depositions or other pretrial or trial proceedings), the
6 designating party must affix the word “CONFIDENTIAL” to
7 each page that contains confidential material. If only a portion
8 or portions of the material on a page qualifies for protection,
9 the producing party also must clearly identify the protected
10 portion(s) (e.g., by making appropriate markings in the
11 margins).

12 (b) Testimony given in deposition or in other pretrial proceedings:
13 the parties and any participating non-parties must identify on
14 the record, during the deposition or other pretrial proceeding,
15 all protected testimony, without prejudice to their right to so
16 designate other testimony after reviewing the transcript. Any
17 party or non-party may, within fifteen days after receiving the
18 transcript of the deposition or other pretrial proceeding,
19 designate portions of the transcript, or exhibits thereto, as
20 confidential. If a party or non-party desires to protect
21 confidential information at trial, the issue should be addressed
22 during the pre-trial conference.

23 (c) Other tangible items: the producing party must affix in a
prominent place on the exterior of the container or containers
in which the information or item is stored the word
“CONFIDENTIAL.” If only a portion or portions of the

1 information or item warrant protection, the producing party, to
2 the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the designating party's right to secure protection under this agreement for such
6 material. Upon timely correction of a designation, the receiving party must make
7 reasonable efforts to ensure that the material is treated in accordance with the
8 provisions of this agreement.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a
11 designation of confidentiality at any time. Unless a prompt challenge to a
12 designating party's confidentiality designation is necessary to avoid foreseeable,
13 substantial unfairness, unnecessary economic burdens, or a significant disruption
14 or delay of the litigation, a party does not waive its right to challenge a
15 confidentiality designation by electing not to mount a challenge promptly after
16 the original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve
18 any dispute regarding confidential designations without court involvement. Any
19 motion regarding confidential designations or for a protective order must include
20 a certification, in the motion or in a declaration or affidavit, that the movant has
21 engaged in a good faith meet and confer conference with other affected parties in
22 an effort to resolve the dispute without court action. The certification must list the
23 date, manner, and participants to the conference. A good faith effort to confer
requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge
without court intervention, the designating party may file and serve a motion to

1 retain confidentiality under Local Civil Rule 7 (and in compliance with Local
2 Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall
3 be on the designating party. Frivolous challenges, and those made for an improper
4 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
5 parties) may expose the challenging party to sanctions. All parties shall continue
6 to maintain the material in question as confidential until the court rules on the
7 challenge.

7 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 IN OTHER LITIGATION

8 If a party is served with a subpoena or a court order issued in other
9 litigation that compels disclosure of any information or items designated in this
10 action as “CONFIDENTIAL,” that party must:

- 11 (a) promptly notify the designating party in writing and include a copy
12 of the subpoena or court order;
- 13 (b) promptly notify in writing the party who caused the subpoena or
14 order to issue in the other litigation that some or all of the material
15 covered by the subpoena or order is subject to this agreement. Such
16 notification shall include a copy of this agreement; and
- 17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the designating party whose confidential material may be
19 affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has
20 disclosed confidential material to any person or in any circumstance not
21 authorized under this agreement, the receiving party must immediately (a) notify
22 in writing the designating party of the unauthorized disclosures, (b) use its best
23 efforts to retrieve all unauthorized copies of the protected material, (c) inform the

1 person or persons to whom unauthorized disclosures were made of all the terms
2 of this agreement, and (d) request that such person or persons execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
4 Exhibit A.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a producing party gives notice to receiving parties that certain
8 inadvertently produced material is subject to a claim of privilege or other
9 protection, the obligations of the receiving parties are those set forth in Federal
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
11 whatever procedure may be established in an e-discovery order or agreement that
12 provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals,
16 each receiving party must return all confidential material to the producing party,
17 including all copies, extracts and summaries thereof. Alternatively, the parties
18 may agree upon appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival
20 copy of the file, even if such materials contain confidential material.

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1 The confidentiality obligations imposed by this agreement shall remain in
2 effect until a designating party agrees otherwise in writing or a court orders
3 otherwise.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 STIPULATED this 9th day of April, 2024.

6 DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendant

WILLIAM EDELBLUTE,
ATTORNEY AT LAW PLLC

7 By /s/ Rachel Marshall

By /s/ William D. Edelblute

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13 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
15 production of any documents in this proceeding shall not, for the purposes of this
16 proceeding or any other federal or state proceeding, constitute a waiver by the
17 producing party of any privilege applicable to those documents, including the
18 attorney-client privilege, attorney work-product protection, or any other privilege
19 or protection recognized by law.

20 DATED May 20, 2024.



A handwritten signature in blue ink, reading "James A. Goetze", is written over a horizontal line.

JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Eastern District of Washington on _____, 20__ in the case of
Tyanna Averett v. Kadlec Regional Medical Center, USDC-Eastern District of
Washington Case No. 4:23- cv-05082-JAG.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the
terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

DATED: _____, at _____, _____.

SIGNATURE

PRINTED NAME